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December 23, 2002

**VIA COURIER**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
P.O. Box 358145  
Pittsburgh, PA 15251-5145

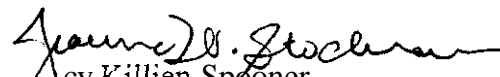
Re: Application of ICG Communications, Inc. (Debtor-in-Possession) for Authority Pursuant to Section 214 of the Communications Act of 1934, **as** Amended, for an Indirect Transfer of Control of ICG Telecom Group, Inc. (Debtor-in-Possession), an Authorized U.S. Domestic Interstate and International Carrier

Dear Ms. Dortch:

On behalf of ICG Communications, Inc. (Debtor-in-Possession) ("ICG Communications") and ICG Telecom Group, Inc. ("ICG Telecom") (together, the "Applicants"), enclosed please find an original and six (6) copies of an application for Commission approval for the indirect transfer of control of ICG Telecom ("Application"). ICG Telecom holds both domestic and international Section 214 authority. Thus, the instant Application is a joint international and domestic Section 214 transfer of control application filed pursuant to Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04(b). Applicants are concurrently filing this Application with the FCC's International Bureau for authority to transfer control of ICG Telecom's international Section 214 authority.

Enclosed please find an FCC Form 159 and a check in the amount of \$860.00 to cover the Commission's filing fee for domestic Section 214 applications. Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,



Nancy Killien Spooner  
Jeanne W. Stockman

Counsel for Applicants

Enclosures

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

\_\_\_\_\_)  
In the Matter of )  
 )  
**ICG Communications, Inc.** )  
**(Debtor-in-Possession)** )  
 )  
Application for Authority Pursuant to )  
Section 214 of the Communications Act )  
of 1934, as Amended, for an )  
Indirect Transfer of Control of )  
**ICG Telecom Group, Inc. (Debtor-in-Possession)** )  
**An** Authorized U.S. Domestic Interstate )  
and International Carrier )  
\_\_\_\_\_

FCC File No. \_\_\_\_\_

*WC 03-4*

**APPLICATION TO TRANSFER CONTROL OF  
INTERNATIONAL AND DOMESTIC SECTION 214 AUTHORITY**

**I. INTRODUCTION AND SUMMARY**

ICG Communications, Inc. (Debtor-in-Possession) (“ICG Communications”), through its undersigned counsel and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (the “Act”) and Sections 63.04 and 63.18 of the Commission’s Rules, 47 C.F.R. §§ 63.04 and 63.18, hereby requests Commission consent to transfer control of its wholly owned subsidiary ICG Telecom Group, Inc. (Debtor-in-Possession) (“ICG Telecom”) (ICG Communications and ICG Telecom, collectively, “Applicants”). The indirect transfer of control of ICG Telecom will result from a substantial change in ownership arising from consummation of a Modified Plan of Reorganization (“Plan”) under Chapter 11 of the U.S. Bankruptcy Code.’

<sup>1</sup> We note that for certain purposes, the Applicants are **no** longer operating as debtors-in-possession as a result of confirmation of the Plan.

Pursuant to Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04(b), Applicants are filing a combined international and domestic Section 214 transfer of control application. Applicants provide in Section V the information required by Section 63.18 of the Commission's Rules, 47 C.F.R. § 63.18. Exhibit A provides the additional information requested by Section 63.04(a)(6) through (a)(12) of the Commission's **Rules**, 47 C.F.R. § 63.04(a)(6)-(12), in connection with the transfer of control of ICG Telecom.

**A. Summary of the Transaction**

This Application is in furtherance of the reorganization and emergence of ICG Communications under Chapter 11 of the U.S. Bankruptcy Code through implementation of the Plan. As discussed in greater detail below, the Plan calls for the recapitalization of ICG Communications through the cancellation of its common and preferred stock and the issuance of 8,000,000 shares of new voting common stock ("New Common Shares"). On consummation of the Plan, all of the New Common Shares will be distributed to various ICG Communications creditors pursuant to an allocation scheme set forth in the Plan. This replacement of ICG Communications' shareholders will cause a substantial change in ownership in ICG Communications, requiring Commission approval, because the shareholders will be replaced entirely in a single transaction.

**B. Request for Expedited Consideration**

Applicants respectfully request that the Commission approve this Application as quickly as possible. As more fully described in Section V and Exhibit A, Applicants qualify for streamlined processing under Sections 63.03(b)(2)(i) and 63.12 of the Commission's Rules, 47 C.F.R. §§ 63.03(b)(2)(i) and 63.12. Further, expeditious grant and consummation of the Plan will **serve** the public interest by reinvigorating the Applicants' status as viable competitors in the

telecommunications marketplace. Applicants emphasize that, following the completion of these transactions, end users will continue to receive service under the same rates, terms and conditions **as** those services currently being provided. Accordingly, Applicants respectfully request expeditious consideration of this Application.

## **II. DESCRIPTION OF THE APPLICANTS**

### **A. ICG Communications**

ICG Communications is a corporation organized under the laws of State of Delaware with principal offices located at 161 Invemess Drive West, Englewood, Colorado 80112. ICG Communications is a facilities-based alternative communications company with a nationwide data and voice network, operating switches in **27** major metropolitan areas and providing voice, data, and Internet communications services nationwide. As **an** integrated metropolitan and nationwide fiber optic infrastructure company, ICG provides access and bandwidth to thousands of customers nationwide, including interexchange carriers, Internet service providers, businesses and other end users.

### **B. ICG Telecom Group**

ICG Telecom is a wholly owned subsidiary of ICG Communications. ICG Telecom is a Colorado corporation with principal offices also located at 161 Invemess Drive West, Englewood, Colorado 80112. ICG Telecom holds authority to provide competitive local exchange and intrastate interexchange telecommunications services in over forty **(40)** states. ICG Telecom provides interstate services on a deregulated basis.

## **III. DESCRIPTION OF THE TRANSACTION**

On November 14, 2000, ICG Communications and most of its subsidiaries, including ICG Telecom, filed for protection of the U.S. Bankruptcy **Court** for the District of Delaware

(“Bankruptcy Court”) pursuant to Chapter 11 of the U.S. Bankruptcy Code? To facilitate its reorganization and emergence from bankruptcy, on October 10, 2002, the Bankruptcy Court approved a Plan to recapitalize ICG Communications and restructure its debt.

ICG Communications’ restructuring will be accomplished by converting general unsecured claims into 100% of newly issued voting common stock of the reorganized ICG Communications. The Plan calls for cancellation of ICG Communications’ common and preferred stock and the issuance of 8,000,000 shares of new voting common stock (“New Common Shares”).<sup>3</sup> Upon consummation of the Plan, all of the New Common Shares will be distributed to various ICG Communications creditors pursuant to an allocation scheme set forth in the Plan! Thus, this replacement of ICG Communications’ shareholders will cause a substantial change in ownership to ICG Communications in a single transaction. Upon consummation, it is expected that ICG Communications’ stock will continue to be widely-held and that only one entity listed in Section V will hold a ten percent (10%) or greater equity interest in ICG Communications. It is also expected that shortly after their issuance, the New Common Shares will be able to be traded publicly.

In addition to issuance and allocation of the New Common Shares, the Plan also specifies that certain other creditors will be issued a *pro rata* share of five-year convertible warrants for the purchase of approximately 10% of the New Common Shares. Through the Plan, ICG Communications also received \$25 million in exit financing upon the Plan’s approval. The Plan calls for the lenders of the exit financing to receive five-year convertible warrants for the

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<sup>2</sup> *ICG Communications, Inc. et al.*, Case No. 00-4238(PJW) (Bankr. D. Del., Nov. 14, 2000).

<sup>3</sup> Under the Plan, there is no recovery for holders of the cancelled common and preferred stock

<sup>4</sup> These holdings are subject to dilution as a result of exercise of convertible warrants and implementation of a management stock option plan.

purchase of approximately 5% of the New Common Shares. Further, the Plan includes the issuance of stock options to ICG Communications' management in an aggregate amount of approximately 7% of the fully diluted equity of the reorganized company.

The Plan also specifies composition of ICG Communications' board of directors ("Board"). Under the Plan, the Board will be comprised of five directors. Two of the five Board members are to be appointed by Cerberus Capital Management, L.P. or any of its affiliates ("Cerberus"), and two of the five Board members are to be appointed by W.R. Huff Asset Management, L.P. ("Huff"). ICG Communications' chief executive officer, who is also a current Board member, will continue in that position and hold the remaining directorship in the reorganized company, serving as Chairman of the Board. Neither Cerberus nor Huff is affiliated with the other and they are not expected to act in concert with one another. Further, neither Cerberus nor Huff will exercise control over the day-to-day operations of ICG Communications, and the Applicants will retain the same experienced telecommunications management team immediately following consummation of the Plan.

#### **IV. PUBLIC INTEREST CONSIDERATIONS**

Approval of the indirect transfer of control described herein will serve the public interest in promoting competition among telecommunications carriers. Specifically, the indirect transfer of control of ICG Telecom that will result from the recapitalization of its parent company, ICG Communications, will provide ICG Telecom with the opportunity to strengthen its competitive position through access to the improved capital structure of ICG Communications. In addition, the improved financial position of ICG Communications that will result from this financial restructuring will enable it to implement its long-term growth plans and to significantly enhance the operational flexibility and efficiency, as well as the long-term financial viability, of ICG

Telecom. These enhancements will inure directly to the benefit of ICG Telecom's customers. The proposed indirect transfer of control will therefore ensure the provision of innovative, high quality telecommunications services to the public and should promote competition in the U.S. domestic and international telecommunications services market.

Applicants emphasize that the indirect transfer of control described herein consists only of a change in the shareholding of ICG Communications and in the composition of its Board, and will not involve a change in the name under which ICG Telecom operates nor any change in the manner in which ICG Telecom provides telecommunications service. Immediately following consummation of the Plan, ICG Telecom will continue to offer the services it currently offers with no change in rates, terms **or** conditions **of** service. Moreover, ICG Telecom will continue to be led by the same team of experienced telecommunications management. The indirect transfer of control of ICG Telecom resulting from the recapitalization of ICG Communications therefore will be seamless and transparent to ICG Telecom's telecommunications service customers, in terms of the services they receive.

**V. INFORMATION REQUIRED BY SECTION 63.18**

Pursuant to Section 63.18 of the Commission's Rules, 47 C.F.R. § 63.18, the Applicants submit the following information:

(a) Names, addresses and telephone numbers:

Transferor: ICG Communications, Inc. (Debtor-in-Possession)  
161 Inverness Drive West  
Englewood, CO 80112  
(303) 414-5000

Transferee: ICG Communications, Inc.  
161 Inverness Drive West  
Englewood, CO 80112  
(303) 414-5000

Licensee: ICG Telecom Group, Inc. (Debtor-in-Possession)  
161 Inverness Drive West  
Englewood, CO 80112  
(303) 414-5000

(b) Place of Formation

Transferor: ICG Communications is incorporated under the laws of Delaware.

Transferee: Following consummation of the Plan, ICG Communications will remain a Delaware corporation.

Licensee: ICG Telecom is organized under the laws of Colorado.

(c) Correspondence concerning this application should be sent to:

Nancy Killien Spooner  
Jeanne W. Stockman  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007  
Tel: (202) 424-7500  
Fax: (202) 424-7643  
Email: [nkspooner@swidlaw.com](mailto:nkspooner@swidlaw.com)  
[jwstockman@swidlaw.com](mailto:jwstockman@swidlaw.com)

with copies to

Scott Beer  
Director, Industry & Corporate Affairs  
ICG Communications, Inc.  
161 Inverness Drive West  
Englewood, CO 80112  
Tel: (303) 414-5906  
Fax: (303) 414-5817

(d) Transferor: ICG Communications has not received authority under Section 214 of the Act.

Transferee: As stated above, ICG Communications has not received authority under Section 214 of the Act.

Licensee: ICG Telecom has received authority to provide resold and facilities-based services under Section 214 of the Act. *See* FCC File No. ITC-98-347.



- (e)(3) By this Application, Applicants seek authority to transfer control of ICG Telecom, a non-dominant common carrier which holds domestic and international Section 214 authority. The transfer of control will result from a substantial change in ownership to ICG Telecom's parent company, ICG Communications.
- (f) Not applicable.
- (g) Not applicable.
- (h) Information concerning the ten percent or greater shareholders of the Applicants is as follows:

The following entity owns 100% of ICG Telecom:

Name: ICG Holdings, Inc.  
Address: 161 Invemess Drive West  
Englewood, CO 801 12  
Citizenship: USA  
Percentage Owned: 100%  
Principal Business: Telecommunications

The following entity owns 100% of ICG Holdings, Inc.:

Name: ICG Canadian Acquisition, Inc.  
Address: 161 Invemess Drive West  
Englewood, CO 801 12  
Citizenship: USA  
Percentage Owned: 100%  
Principal Business: Telecommunications

The following entity owns 100% of ICG Canadian Acquisition, Inc.:

Name: ICG Communications, Inc.  
Address: 161 Inverness Drive West  
Englewood, CO 80112  
Citizenship: USA  
Percentage Owned: 100%  
Principal Business: Telecommunications

Immediately following consummation of the Plan, the following entities will own a ten percent (10%) **or** greater interest in ICG Communications:

Name: W.R. Huff Asset Management Co., LLC  
Address: **1776** On the Green  
**67** Park Place  
Morristown, NJ **07960**  
Citizenship: U.S.  
Percentage Owned: Approximately **16-19%**  
Principal Business: Investment Management

**After** consummation of the Plan, ICG Communications will not have any interlocking directorates with a foreign telecommunications carrier.


- (i) ICG Communications certifies that neither currently nor upon consummation of the Plan will it be a foreign carrier or affiliated with a foreign carrier.
- (j) ICG Communications certifies neither currently nor upon consummation of the Plan will it seek to provide international telecommunications services to any destination country where:
  - (1) ICG Communications is a foreign carrier in that country; or
  - (2) ICG Communications controls a foreign carrier in that country; or
  - (3) Any entity that owns more than 25 percent of ICG Communications, or that controls ICG Communications, controls a foreign carrier in that country.
  - (4) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate more than 25 percent of ICG Communications and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.
- (k) Not applicable.
- (l) Not applicable.
- (m) Not applicable.
- (n) ICG Communications certifies that it **has** not agreed to accept special concessions, as defined in Section 63.14(b) of the Commission's Rules, directly or indirectly, from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route, and will not enter into such agreements in the future.

- (o) Applicants certify that they are not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (p) Applicants request streamlined processing of this Application pursuant to Section 63.12(a)-(b) of the Commission's Rules. This Application qualifies for streamlined processing because, as set forth above, ICG Communications has no affiliation with a foreign carrier, has no affiliation with a dominant U.S. carrier whose international switched or private line services ICG Communications seeks authority to resell, and does not seek authority to provide switched basic services over private lines to a country for which the Commission has not previously authorized the provision of such services.

## VI. CONCLUSION

For the reasons stated herein, Applicants respectfully submit that the public interest, convenience and necessity would be furthered by grant of this Application for Commission consent to transfer control of ICG Telecom through a substantial change in ownership of its parent company, ICG Communications, which will arise from ICG Communications' consummation of a Plan under Chapter 11 of the U.S. Bankruptcy Code.

Respectfully submitted,

By:   
Nancy Killien Spooner  
Jeanne W. Stockman  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
Tel: (202) 424-7500  
Fax: (202) 424-7643

Counsel for Applicants

Dated: December 23, 2002

## **Exhibit A**

### **DOMESTIC 214 TRANSFER OF CONTROL INFORMATION**

Pursuant to Section 63.04 of the Commission's Rules, 47 C.F.R. § 63.04, the Applicants request authority to transfer control of ICG Telecom through a substantial change in ownership which will arise from consummation of a Modified Plan of Reorganization ("Plan") under Chapter 11 of the U.S. Bankruptcy Code by its parent company, ICG Communications. As mentioned in the foregoing, ICG Telecom holds international and domestic Section 214 authorizations and, pursuant Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04(b), Applicants are filing a combined application to transfer control of ICG Telecom. Applicants provide the following information in support of their request:

#### **63.04(a)(6): Description of the Transaction**

Section III of the attached Application contains a description of the transaction leading to the transfer of control.

#### **63.04(a)(7): Description of Geographic Service Area and Services in Each Area**

ICG Telecom provides domestic resold and/or facilities-based interstate telecommunications services in all states except Alaska and Maryland. Consummation of the Plan and the substantial change in ownership of ICG Communications will have no impact on the areas where ICG Telecom provides service. As mentioned in the foregoing, immediately following consummation of the Plan, ICG Telecom will continue to offer the services it currently offers with no change in rates, terms or conditions of service.

#### **63.04(a)(8): Presumption of Non-Dominance and Qualification for Streamlining**

Applicants respectfully submit that this Application is eligible for streamlined processing. In particular, this Application falls within the provisions of Section 63.03(b)(2)(i) because, immediately following consummation of the Plan, (1) the Applicants will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) the Applicants will provide local exchange service only in areas served by dominant local exchange carriers (none of which are parties to the transaction); and (3) none of the Applicants or their affiliates are dominant with respect to any service.

**63.04(a)(9): Other Pending Commission Applications Concerning the Proposed Transaction**

Applicants have not filed any other applications with the Commission related to consummation of the Plan.

**63.04(a)(10): Special Consideration**

As described herein, consummation of the Plan and the resulting substantial change in ownership of ICG Communications is intended to facilitate its restructuring under Chapter 11 of the U.S. Bankruptcy Code. The Plan has been approved by the U.S. Bankruptcy Court for the District of Delaware. Thus, it is critical to a successful and orderly restructuring that ICG Communications consummate the Plan as quickly as possible. For that reason, Applicants request expedited treatment of this Application.

**63.04(a)(11): Waiver Requests (If Any)**

None.

**63.04(a)(12): Public Interest Statement**

Section IV of the attached Application contains the required public interest statement.

## **Certification**

CERTIFICATION

On behalf of ICG Communications, Inc. (Debtor-in-Possession), I hereby certify that the statements in the foregoing *Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended for an Indirect Transfer of Control of ICG Telecom Group, Inc. (Debtor-in-Possession), an Authorized U.S. Domestic Interstate and International Carrier* with respect to the Applicants and the transfer of control for which Commission approval is **sought**, are true, complete, and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

ICG COMMUNICATIONS, INC.

SIGNATURE 

NAME: Charles P. Keesee II

TITLE: Senior Vice President, Technology Support Services

DATE: December 20, 2002